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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 794

ABRAHAM S. RATNER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES.

STATEMENT OPPOSING JURISDICTION.

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IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

CR A 1988

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

ABRAHAM S. RATNER,

Defendant and Appellant.

STATEMENT OF MATTER AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

The appellee respectfully submits a statement of matter and grounds making against the jurisdiction of the United States Supreme Court, as follows:

I.

There is involved no substantial Federal question which has not been settled by previous decisions of this Court.

This appeal is based upon the alleged invalidity of two sections of the Vehicle Code of the State of California, Statutes of 1935, Chapter 27, as amended, each of which we shall discuss separately.

Unless otherwise indicated, all citations to sections refer to sections of the Vehicle Code of the State of California.

A.

Section 510 is not in violation of the Fourteenth Amendment of the Constitution of the United States because of vagueness, indefiniteness or uncertainty.

The provisions of Section 510 are as follows:

> "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property."

Examination discloses that standards are therein set forth which constitute a yardstick for safe driving. The objections raised and sustained in *U. S.* v. *Cohen Grocery Co.*, 255 U. S. 81, where the statute under consideration forbade the making of an "unjust or unreasonable rate or charge in handling or dealing in or with any necessaries," are not present.

In the section here involved there are set forth three definite standards: the traffic on, the surface, and the width of the highway. The scope of inquiry is therefore limited and brought within the confines of reasonable understanding.

A law is not indefinite merely because a man must estimate his actions to correspond with what a jury may decide, at a later date, to be proper.

Nash v. *United States*, 229 U. S. 373
Miller v. *Strahl*, 239 U. S. 426
United States v. *Ragen*, 314 U. S. 513

In *United States* v. *Ragen*, supra, this Court stated, at page 523:

> "The mere fact that a penal statute is so framed as to require a jury upon occasion to determine a question of

reasonableness is not sufficient to make it too vague to afford a practical guide to permissible conduct."

For years, a number of states have had in force statutes which are similar to Section 510 both in form and substance. The courts have considered these statutes, and the weight of authority lies in favor of their validity. The majority of the cases involving these statutes have been collected in 26 A. L. R. 897-903, and are cited below, together with more recent decisions.

Mulkern v. *State*, 176 Wis. 490.
State v. *Schaeffer*, 96 Ohio St. 215.
Schultz v. *State*, 89 Neb. 34.
State v. *Goldstone*, 144 Minn. 405.
People v. *Beak*, 291 Ill. 449.
Smith v. *State*, 186 Ind. 252.
Gallagher v. *State*, 193 Ind. 629.
People v. *Banat*, 39 Cal. App. (2d) (Supp.) 765.

Appellant urges that, because different traffic officers or different juries may not agree upon whether a given speed is or is not dangerous under certain circumstances, the law is uncertain.

If the driver is proceeding at a speed in excess of the prima facie safe speed, the law itself determines an officer's duty. If the speed is less than that prescribed as prima facie lawful, the situation is no different from that which confronts officers charged with enforcing many laws, the violation of which amounts to a misdemeanor. One officer will arrest for intoxication a person whom another officer would not deem to be intoxicated. We know from experience that the idea of what constitutes intoxication is as varied as the seasons.

The appellant urges that, because one jury may convict a defendant under a given set of facts while a different jury

will acquit another defendant under the same set of facts, unequal enforcement of the law results. It is a matter of common knowledge that one jury will convict a defendant of intoxication upon evidence which another jury would consider insufficient to justify such action. The same result obtains in prosecutions for lewd and indecent conduct, vagrancy, indecent shows, and other offenses, including theft and acts classified as criminal per se. The reaction of juries to evidence is not uniform.

Would appellant have this Court declare all our laws against indecency, immorality and safety invalid just because some are convicted while others equally guilty are acquitted? Manifestly, the legislature cannot prepare a chart showing all the possible conditions which, when combined with a named rate of speed, will be unsafe. It has followed what has been found by legislative experience to be the only practical method. It established a rule of reason; one which a reasonable man by the exercise of his powers of observation and deduction can well follow.

Appellant urges that jurisdiction of this matter be taken to insure an even flow of interstate traffic and to relieve in the minds of interstate motorists the confusion caused by conflicting decisions in various states. However desirable such action might be, the rule is well settled that one not affected may not complain. As the record does not disclose that appellant has traveled elsewhere than in California, his reasoning finds no support.

Massachusetts v. *Mellon*, 262 U. S. 447;
Utah Power & Light Co. v. *Pfost*, 286 U. S. 165;
Virginian Railway Co. v. *System Federation*, 300 U. S. 515;
Henneford v. *Silas Mason Co.*, 300 U. S. 577.

B.

Section 511 is not in violation of the Fourteenth Amendment of the Constitution of the United States for the reason that the statutory presumption therein created arises only after proof of certain facts rationally connected with it.

The provisions of Section 511, as amended by Statutes 1941, Chapter 1052, insofar as they apply to the case at bar, are as follows:

> "The speed of any vehicle upon a highway not in excess of the limits specified in this section or established as authorized in this code is lawful unless clearly proved to be in violation of the basic rule declared in Section 510 hereof.
>
> "The speed of any vehicle upon a highway in excess of any of the limits specified in this section or established as authorized in this code is prima facie unlawful unless the defendant establishes by competent evidence that any said speed in excess of said limits did not constitute a violation of the basic rule declared in Section 510 hereof at the time, place and under the conditions then existing.
>
> "The prima facie limits referred to above are as follows and the same shall be applicable unless changed as authorized in this code and, if so changed, then only when signs have been erected giving notice thereof, in which event the speed designated on the sign shall be the prima facie limit:
>
> • • • • • • •
>
> "(b) Twenty-five miles per hour:
>
> "(1) In any business or residence district."

Residence and business districts are defined in Sections 89 and 90 of the Vehicle Code of California, Statutes of 1935, page 99.

A state may prescribe rules of evidence providing that proof of a particular fact, or of several facts collectively, shall be prima facie evidence of another fact when there is some rational connection between the fact proved and the ultimate fact presumed.

Mobile, J. & K. C. R. Co. v. *Turnipseed*, 219 U. S. 35;
Bandini Petroleum Co. v. *Superior Court*, 284 U. S. 8;
McFarland v. *American Supar Refining Co.*, 241 U. S. 79.

To raise the presumption here provided, it is incumbent upon the prosecution to prove not only that the speed of the defendant's vehicle was in excess of the prima facie limit but also the character of the district through which such vehicle was then traveling. This having been done, the facts presumed are those set forth in Section 510, previously discussed. The burden of going forward with the evidence is then cast upon the accused. Such was the construction placed upon the statute in the case of *In re* Johnson, 6 Cal. App. (2d) 654, where the court, in construing subdivisions "a" and "c" of Section 113, California Vehicle Act (now Sections 510 and 511, respectively, of the California Vehicle Code), at page 657, said:

> "We think the language means, and the legislature intended that speeds in excess, for instance, of 45 miles an hour, is prima facie evidence of a violation of the prohibitory provisions of the section, which are found only in subdivision 'a'; that is, a speed in excess of 45 miles an hour, for example, is a greater speed than is prudent, reasonable or proper, having due regard to the traffic, surface and width of the highway, and that such driving upon a public highway, at such speed, is to endanger the life, limb or property of some person.
>
> "The section then gives the alleged offending vehicle driver an opportunity to rebut the prima facie effect of the excessive speed, and show that none of the prohibitory provisions of the section have been violated."

It is under this construction that the statute in question will be read.

Lindsley v. *Natural Carbonic Gas Co.*, 220 U. S. 61;
Bandini Petroleum Co. v. *Superior Court*, 284 U. S. 8.

The legislature, in prescribing the maximum prima facie limits, has taken cognizance of the fact that some districts are more thickly populated than others, resulting in greater vehicular traffic, presenting more actual and potential hazards and necessitating slower driving. It has set forth the speed limits at which, under normal conditions, it is safe to drive in congested areas. In the case of a residential district such prima facie limit is 25 miles per hour. Therefore, it is the position of the appellee that there is a rational connection between the facts proved in the instant case, to wit, a speed of 40 miles per hour in a residential district, and the facts presumed: that such driving was neither reasonable nor prudent.

A number of states have statutes similar in substance and form to Section 511. Examination of the cases involving those statutes discloses that the construction placed thereon by the courts of the respective jurisdictions is substantially the same as the construction placed upon Section 511 by the California courts.

People v. *Mellon*, 104 Misc. Rep. 355;
People v. *Brown*, 33 N. Y. S. (2d) 58;
People v. *Carrie*, 204 N. Y. S. 759;
Commonwealth v. *Cassidy*, 209 Mass. 24;
City of Cincinnati v. *Cramer*, 63 Ohio App. 526;
People v. *Beak*, 291 Ill. 449;
Smith v. *State*, 186 Ind. 252;
Gallagher v. *State*, 193 Ind. 629.

We do not contend that Section 511 embodies the principle of convenience in producing proof. We do urge that it

constitutes a legislative declaration of what the legislature found to be the limit of speed at which vehicles could be safely driven under normal conditions in districts of certain density of occupation, and rightfully places upon a defendant the duty of going forward with the evidence to show that, because of the condition of the highway, the absence of other traffic, etc., it was safe for him to exceed such prescribed speed.

We think it fundamental that the State has the power to prescribe maximum speed of vehicles. Having such power it has the power to prescribe the conditions under which a given speed may be exceeded, and casts upon him who wishes to exceed a certain speed the burden of showing that his action was lawful.

The appellee submits that the federal questions involved in this case have been fully answered by applicable decisions of this Court and that no reason appears why this Honorable Court should take jurisdiction of the instant appeal.

Respectfully submitted,

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